EISENBERG AND HANCOCK, LLP

January 9, 2007

The Honorable Vaughn R. Walker
Chief Judge, United States District Court
Northern District of California
450 Golden Gate Ave.
San Francisco, CA 94102

Re: *National Security Agency Telecommunications Records Litigation*
MDL Docket No. 06-1791 VRW

Dear Chief Judge Walker:

We write concerning *Al-Haramain Islamic Foundation, Inc. v. Bush*, which the Judicial Panel on Multidistrict Litigation (JPML) transferred to you from the United States District Court for the District of Oregon as a tag-along action with the *National Security Agency Telecommunications Records Litigation* by order dated December 15, 2006.

As we explained in our letter to you dated November 7, 2006, which describes the *Al-Haramain* litigation, there are two pending motions and a pending discovery conference in *Al-Haramain*, all of which Oregon district court Judge Garr M. King deferred pending the JPML's decision on transfer:

- A fully-briefed motion by defendants seeks a stay of all further district court proceedings pending the Ninth Circuit's decision on the defendants' interlocutory appeal of Judge King's ruling of September 7, 2006 on defendants' invocation of the state secrets privilege. (On December 21, 2006, the Ninth Circuit granted defendants' petition for interlocutory appeal.) Oral argument on defendants' stay motion has not yet been heard.

- A motion by plaintiffs seeks partial summary judgment of liability or, alternatively, partial summary adjudication of specific issues. Defendants have not yet filed their opposition to this motion.

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- Judge King's ruling of September 7, 2006 prescribes the scheduling of a discovery conference to address several pending discovery issues.

At the close of the December 21, 2006 hearing before you in the *National Security Agency Telecommunications Records Litigation*, one of the undersigned attorneys for the *Al-Haramain* plaintiffs, Jon B. Eisenberg, informed you of the pending motions and discovery conference in the *Al-Haramain* litigation and advised you that plaintiffs' and defendants' counsel would be conferring with regard to post-transfer proceedings. You instructed Mr. Eisenberg to advise you by letter of the outcome of that conference. That is the purpose of this letter.

By email to defense attorneys Anthony Coppolino, Andrew Tannenbaum and Andrea Gacki dated December 27, 2006, Mr. Eisenberg proposed the following:

- At the hearing scheduled for February 9, 2007 for oral argument on the motion for a stay of the telecommunications records litigation during the pendency of the interlocutory appeal in *Hepting*, the court shall also hear oral argument on defendants' fully-briefed motion for a stay of the *Al-Haramain* litigation during the pendency of the interlocutory appeal *Al-Haramain*.

- On plaintiffs' pending motion for partial summary judgment or adjudication, defendants' opposition shall be due January 22, 2007, plaintiffs' reply shall be due January 29, 2007, and at the hearing scheduled for February 9, 2007 the court shall schedule a subsequent date for a hearing on the motion.

- At the hearing scheduled for February 9, 2007, the court shall schedule a date for the discovery conference previously ordered by Judge King.

On January 4, 2007, defense counsel and Mr. Eisenberg conferred by telephone regarding these proposals. Defense counsel stated that they agree to the proposal for the court to hear oral argument on the stay motion on February 9, 2007, but that they oppose any further proceedings on the motion for partial summary judgment or adjudication, as well as the scheduling of a discovery conference, until the court rules on the stay motion.

During this telephone conference, counsel also discussed the need for a transfer of certain documents filed under seal in this case from a Sensitive Compartmented

Information Facility (SCIF) in Portland to one in San Francisco where you can have ready access to these documents. Defense counsel said they are working on arranging the logistics of the document transfer and agreed to advise you of the status of the pending document transfer at the time of the February 9, 2007 hearing.

We therefore respectfully request that the following be added to the court's agenda for the hearing of February 9, 2007:

- Oral argument in *Al-Haramain* on the defendants' fully-briefed motion for a stay during the pendency of their interlocutory appeal in *Al-Haramain.*

- Determination of a schedule for the completion of briefing and oral argument on the *Al-Haramain* plaintiffs' pending motion for partial summary judgment or adjudication.

- Scheduling of a date for the discovery conference previously ordered by Judge King in *Al-Haramain.*

- A status report by defense counsel on their arrangements for transfer of the sealed documents in *Al-Haramain* to a SCIF in San Francisco.

Respectfully submitted,

Jon B. Eisenberg
Eisenberg and Hancock LLP
Steven Goldberg
Thomas H. Nelson
Zaha S. Hassan
J. Ashlee Albies
Lisa R. Jaskol

Attorneys for Plaintiffs Al-Haramain Islamic Foundation, Inc., Wendell Belew, and Asim Ghafoor

PROOF OF SERVICE

I, Mara Cheng, declare as follows:

I am employed in the County of San Francisco, State of California and am over the age of eighteen years. I am not a party to the within action. My business address is 1970 Broadway, Suite 1200, Oakland, CA 94612. I am readily familiar with the practice of Eisenberg and Hancock, LLP for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, such correspondence would be deposited with the United States Postal Service, with postage thereon fully prepaid, the same day I submit it for collection and processing for mailing. On *January 9, 2007*, I served the within document entitled:

- **Correspondence to the Honorable Vaughn R. Walker dated January 9, 2007**

on the parties in the action by placing a true copy thereof in an envelope addressed as follows:

XX **ECF via the PACER website** - All counsel assigned to receive electronic filings for the above-referenced matter

and, following ordinary business practices of Eisenberg and Hancock, LLP by sealing said envelope and depositing the envelope for collection and mailing on the aforesaid date by placement for deposit on the same day in the United States Postal Service at 180 Montgomery Street, San Francisco, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on January 9, 2007, at San Francisco, California.

Mara Cheng